

[*Willy v. The Coastal Corp.*](#), 85-CAA-1 (ALJ Dec. 4, 1997)

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**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
800 K STREET, NW, SUITE 400 NORTH
WASHINGTON, DC 20001-8002**

DATE: December 4, 1997
CASE NO.: 85-CAA-1

In the Matter of:

DONALD J. WILLY,
Complainant

v.

THE COASTAL CORPORATION AND
COASTAL STATES MANAGEMENT COMPANY,
Respondent

BEFORE: John M. Vittone
Chief Administrative Law Judge

**ORDER RECOMMENDING CORRECTION OF
RECOMMENDED DECISION AND ORDER
ON DAMAGES, FEES AND COSTS**

On May 8, 1997, the undersigned issued a Recommended Decision and Order on Damages, Fees and Costs in this matter. On May 23, 1997, Respondents filed a motion seeking modification of the recommended decision on the ground that the interest calculation was in error. Respondent's contention is that the interest award was based on a faulty application

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of I.R.C. § 6621. Recalculating as suggested by Respondents would result in an interest award of \$195,664.

On May 29, 1997, the undersigned issued an Order to Show Cause directing Complainant to state why Respondents' method of calculation of interest as stated in its May 23, 1997 motion should not be adopted. Complainant filed his response to the Order to Show Cause on June 14, 1997. Complainant's response focuses on (1) whether interest on backpay should be compounded, and (2) whether I.R.C. § 6621(a)(2) should have been employed in making the interest calculation.

The issue of whether backpay awards should be compounded was addressed in the Recommended Decision and Order on Damages, Fees and Costs at 15 n.9. As determined therein, the decisions of *Blackburn v. Metric Constructors*, 86-ERA-4, slip op. at 19 n.12 (Sec'y Oct. 30, 1991) and *OFCCP v. WMATA*, 84-OFC-8 (Ass't Sec'y Aug. 23, 1997), *motion for recon.. den.*, (Ass't Sec'y Nov. 17, 1991), indicate that interest on a backpay award should not be compounded in Department of Labor administrative proceedings.

Complainant's contention that I.R.C. § 6621(a)(2), which is the interest rate charged when a taxpayer has underpaid taxes, should be employed in an employment discrimination case is not supported by the cases cited by Complainant. According to Larson, Employment Discrimination at §92.07 (Matthew-Bender 2d ed. 1996), the federal courts have not reached consensus about what interest rate should apply to prejudgment interest awards on backpay in an employment discrimination action. A few federal district courts have used the short-term rate for the underpayment of income tax. *See* Employment Discrimination at §92.07 and cases cited at n.20. Many more federal district courts and courts of appeals, however, use the adjusted prime rate. *See id.* at §92.07 and cases cited at n.21; *see also E.E.O.C. v. Regency Architectural Metals Corp.*, 896 F. Supp. 260 (D. Conn. 1995); *Frazier v. Southeastern Pennsylvania Transportation Authority*, 814 F. Supp. 11 (E.D. Pa. 1993); *Gallo v. John Powell Chevrolet, Inc.*, 779 F.Supp. 804 (M.D.Pa. 1991); *Maturo v. National Graphics, Inc.*, 722 F.Supp. 916 (D.Conn. 1989). I agree with the Seventh Circuit Court of Appeals that "[t]he adjusted prime rate is a reasonable indicator of the value of the use of money." *E.E.O.C. v. O'Grady*, 857 F.2d 383 (7th Cir. 1988); *see also Taxman v. Board of Educ. of Tp. of Piscataway*, 91 F.3d 1547 (3rd Cir. 1996). Accordingly, I conclude that the interest rate found at I.R.C. § 6621(b) was properly employed in this case.

Complainant did not specifically address whether the interest calculation in the May 8, 1997 recommended decision was in error if no compounding of interest is permitted. I find that Respondent's motion for correction of the Recommended Decision and Order on Damages, Fees and Costs is well-grounded, and conclude that relief should be granted pursuant

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to Federal Rule of Civil Procedure 60(b)(1), as incorporated by 29 C.F.R. § 18.1(a).¹ Accordingly, I find that the May 8, 1997 Recommended Decision and Order on Damages, Fees and Costs should be CORRECTED to state a prejudgment interest award on backpay of \$195,664 due as of March 31, 1997.

RECOMMENDED ORDER

I recommend the "Recommended Order" stated in the May 8, 1997 Recommended Decision And Order on Damages, Fees and Costs be stricken, and that the Administrative Review Board issue the following order instead:

Respondents, Coastal Corporation and Coastal States Management Company, are hereby ORDERED to pay:

- (1) Complainant, Donald J. Willy, \$390, 521.59 for damages, interest, compensatory damages, and costs, plus any additional pre-judgment interest on the back pay portion of the award that accrues between March 31, 1997 and the ARB's final order, or date of payment, whichever occurs first.²
- (2) Post-judgment interest on the back pay portion of the award calculated pursuant to 28 U.S.C. § 1961 (1988). *See Tritt v. Fluor Constructors, Inc.*, 88-ERA-29 @ 2-3 (Sec'y Mar. 16, 1995).
- (3) The law firm of Stuart M. Nelkin & Nelkin & Nelkin, P.C., \$68,270.00 for attorneys' fees and expenses.

JOHN M. VITTON
Chief Administrative Law Judge

JMV/trs/kpf

[ENDNOTES]

¹In *Rex v. Ebasco Services, Inc.*, 87-ERA-6 and 40 (ALJ Apr. 13, 1994), I concluded that an ALJ does not have the authority to rule on a motion for reconsideration based on *Tankersley v. Triple Crown Services, Inc.*, 92-STA-8 (Sec'y Feb. 18, 1993) (Secretary declined to consider ruling by ALJ made subsequent to issuance of recommended decision in STAA case). I note, however, that the United States Supreme Court has recognized the authority in administrative officers and tribunals to correct judgments which contain clerical errors or judgments which have been issued due to inadvertence or mistake. *American Trucking Ass'ns v. Frisco Transp Co.*, 79 S.Ct. 170, 358 U.S. 133, 3 L.Ed.2d 172 (1958). My calculation of interest in this matter was clearly mistaken, and I will assume that I have the inherent authority to recommend to the Administrative Review Board correction of such an error. *Compare Crosier v. Westinghouse Hanford Co.*, 92-CAA-3 (Sec'y Dec. 8, 1994) (Secretary assumed he had inherent authority to reconsider a final decision in a case outside the Sixth Circuit; contrary authority exists in the Sixth Circuit).

²Part IX of the recommended decision should be modified as follows:

(1) Back wages:	\$ 135,669.12
(2) Benefits:	\$ 53,465.47
(3) Pre-judgment Interest to 3/31/97:	\$ 195,664.00

(4) Compensatory damages:	\$	2,000.00
(5) Attorney's Fees and Expenses:	\$	68,270.00
(6) Costs:	\$	3,723.00
TOTAL:		\$ 458,791.59